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March 13, 2002

By Electronic Filing and Hand Delivery

Mr. William Caton
Acting Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: CC Docket No. 01-347: Application by Verizon for Authorization to Provide In-Region InterLATA Services in New Jersey

Dear Mr. Caton:

Enclosed are WorldCom's Supplemental Comments for filing in the above proceeding.

Please call me with any questions.

Sincerely,

Keith L. Seat
Senior Counsel
Federal Advocacy

Enclosures

cc (w/encl.): Susan Pié

Before the
Federal Communications Commission
Washington, D.C. 20554

RECEIVED

MAR 13 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Application by Verizon for Authorization	)	
Under Section 271 of the Communications	)	
Act to Provide In-Region, InterLATA	)	CC Docket No. 01-347
Services in the State of New Jersey	)	
	)	

SUPPLEMENTAL COMMENTS OF WORLDCOM, INC. ON THE APPLICATION BY VERIZON FOR AUTHORIZATION TO PROVIDE IN-REGION, INTERLATA SERVICES IN NEW JERSEY

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March 13, 2002

INTRODUCTION AND EXECUTIVE SUMMARY

The very need for supplemental comments to be filed on day 83 of the Commission's 90-day review period demonstrates that Verizon prematurely filed its section 271 application for New Jersey. Despite the Commission's reliance on state commissions to analyze UNE pricing issues, Verizon chose to file its application long before the New Jersey Board of Public Utilities ("BPU") issued its Final Order on unbundled network element ("UNE") pricing. Verizon apparently hoped that the BPU would act quickly or that there would be no serious pricing issues in New Jersey. In either case, Verizon lost its gamble and its application must now be denied or the clock restarted.

Verizon submitted its application with full knowledge that it was not complete when filed, since the state pricing order was a critical aspect of its case. This alone is a fatal flaw. Moreover, with the issuance of the BPU's pricing order last week, it is now even clearer that critical total element long run incremental cost ("TELRIC") errors infect the New Jersey UNE rates. Indeed, Verizon's switching rates in New Jersey must be reduced by nearly one-half in order to be properly cost-based.

The final straw is that Verizon yesterday defiantly refused to waive its right to appeal the very pricing decision on which it bases its section 271 application. Verizon apparently expects this Commission to grant section 271 authority next week on these prices which it would subsequently be able to appeal with impunity. In a high-handed manner, Verizon merely states that it will not seek to stay the BPU's order if it chooses to appeal.

There can be no doubt that Verizon's New Jersey application should be denied until its above-cost prices are reduced, because its rates do not comply with the requirements of the competitive checklist, and because its entry into the in-region long-distance market would not be in the public interest.

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Application by Verizon for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Services in the State of New Jersey	))))	CC Docket No. 01-347
	)	

SUPPLEMENTAL COMMENTS OF WORLDCOM, INC. ON THE APPLICATION BY VERIZON FOR AUTHORIZATION TO PROVIDE IN-REGION, INTERLATA SERVICES IN NEW JERSEY

With only one week remaining before the Commission must resolve Verizon's section 271 application for New Jersey, it is abundantly clear that the application must be rejected. Verizon's application was premature, putting the Commission – and commenters – into an unacceptable position in the final days of the proceeding. Nor can Verizon claim that this is a mere procedural matter, for the New Jersey BPU's Final Order reveals that in fact there is no justification for the serious TELRIC concerns that WorldCom previously raised. These are severe problems that nearly double Verizon's switching rates and must result in rejection of this application.

Complete When Filed Rule Should Be Applied

Quite simply, Verizon filed its New Jersey section 271 application too soon. Knowing the reliance that the Commission places on state rate proceedings, Verizon had no basis for filing this application prior to the BPU issuing its Final Order, which did not occur until last week. Although the Commission has sometimes waived its complete-when-filed rule, it should not do so here for there is no justification or basis for permitting this application to go forward.

The BPU's pricing order reveals pricing errors of such magnitude that the Commission should apply its complete-when-filed rule in order to have time to sort through these important substantive issues. This is not an idle matter, for pricing is all that stands in the way of WorldCom's residential entry on a widespread basis in New Jersey. Moreover, in light of the new New York UNE rates, which were revised by the New York Public Service Commission ("PSC") on January 28, 2002, the New Jersey application – if approved – would effectively set a new switching rate benchmark for the Verizon region that would be significantly higher than the New York rate. Yet New Jersey switching <u>costs</u> are somewhat lower than in New York. The Commission needs to give the BPU's order the careful scrutiny it deserves, in order to analyze and resolve the TELRIC errors discussed below. The Commission's 90-day schedule is sufficiently taxing without permitting the applicant to cut the time for review down to mere days.

The Commission has long maintained that a Bell Operating Company ("BOC") must include in its section 271 application all of the evidence on which the applicant wants the Commission to rely. <u>Texas Order</u> ¶ 35 (citations omitted). The Commission has emphasized that this includes pricing. <u>Kansas-Oklahoma Order</u> ¶ 26. The Commission has been equally clear that a BOC is not permitted to supplement its application with new evidence that "post-date[s] the filing of the comments (*i.e.*, day 20)." <u>Texas Order</u> ¶ 35. While the Commission has waived these rules in certain "unique" situations, here Verizon simply filed its application without waiting for the BPU's order explaining the UNE prices. Had there not been serious pricing concerns, Verizon might have gotten by with this, but in fact there are grave problems, as discussed below. This is not a situation like SWBT's section 271 application for Kansas and Oklahoma in which the Commission waived these rules in order to consider rate reductions voluntarily filed by SWBT, where "[t]he nature of these rate changes has also permitted the Commission staff to evaluate these rate changes reasonably, within the 90-day review period." Kansas-Oklahoma Order ¶ 23. Nor is it similar to Verizon's application for Rhode Island where the late change was to substantially reduce UNE rates, which was a positive change that would foster competition, and was precipitated by events outside the applicant's control. Rhode Island Order ¶ 12. Notably, the Commission warned in both Rhode Island and Kansas-Oklahoma that it did not "intend to allow a pattern of late-filed changes to threaten the Commission's ability to maintain a fair and orderly process for consideration of section 271 applications." Rhode Island Order ¶ 13; Kansas-Oklahoma Order ¶ 25.

Here, the expedited briefing schedule on the BPU's order does not permit reply briefs or substantive ex partes to be filed in order to further analyze the statements of the applicant (or commenters). Given the importance of the pricing case, the Commission should not bend its rules to permit this sort of gamesmanship by Verizon. Instead, the Commission merely has to uphold its previously articulated standards to ensure that this – and future – applications receive the scrutiny they deserve. These issues might be characterized as mere form over substance if there were not real TELRIC problems behind our concerns, which are discussed next.

The BPU's Order Confirms TELRIC Problems with Verizon's UNE Rates

Rather than resolving or justifying the serious TELRIC concerns that have been raised about the new UNE rates in New Jersey, the BPU's order reveals that in fact there is no adequate explanation. Focusing on only three key TELRIC issues that WorldCom previously raised shows that these errors alone nearly double the switch usage and port rates being charged in the state.1 This is a substantial problem that presents an ongoing barrier to ubiquitous local residential competition anywhere in the state, depriving New Jersey consumers of the benefits of competition.

Usage Rates Ignore Almost One-Third of Year. As previously discussed in WorldCom's comments, Verizon uses an incorrect methodology for determining the number of switching minutes for setting rates. Verizon collects all usage-related costs over 251 days of the year, which is the number of weekdays less holidays. This methodology for determining the number of minutes in a year effectively assumes that there are no minutes of calling on weekends or holidays, even though Verizon charges competitive local exchange carriers ("CLECs") for weekend and holiday usage. All revenue Verizon collects on weekends and holidays is in excess of the cost of providing the usage-related portion of the switch. Frentrup Supp. Decl. ¶ 5.

None of the BPU's rationales for this methodology are sufficient to justify it. The BPU first endorses the concept of busy hour, which WorldCom agrees should determine the size of the switch. But once the size of the switch is set, costs should be spread out over all minutes that will be charged, not just usage during workdays. Frentrup Supp. Decl. ¶ 6.

The BPU next explains the omission of weekend and holiday usage in setting rates by asserting that such usage would "effectively reduce average switch capacity." BPU Decision & Order at 122. This is no justification because there is no such thing as "average switch capacity." A switch has a set capacity once it is designed and put in place, so the level of demand does not change the switch's capacity, merely its average utilization. Frentrup Supp. Decl. ¶ 7.

Finally, the BPU cites the use of business days in the HAI Model and in a cost study by WorldCom's expert witness (on behalf of another CLEC in a separate proceeding) as justifying their use in this case. But in both cases the BPU has misunderstood the use of business days. In the HAI Model (and in the Commission's Synthesis Model), the number of business days is used to work up the busy hour minutes used to size the switch. Then, once the size of the switch is resolved, the usage rate – which is the critical number to be determined – is found by dividing that switch usage costs by all minutes of use. Further, the study cited by the BPU that was performed by WorldCom's expert witness was for another CLEC that actually had very little usage on the weekends, but even that small amount of weekend usage was included in the cost study. Frentrup Supp. Decl. ¶ 8.

In short, the rationales set forth by the BPU to justify allowing Verizon to use only business day demand in setting switch usage rates misunderstand switch engineering and the role that business days played in other costs studies. As previously explained in WorldCom's comments, using the very conservative assumption that usage on non-peak days is only half the level of usage on peak days implies that the switch usage rates should be 18.5 percent lower.

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1 Other input and methodology errors are discussed in WorldCom's previously filed comments in this proceeding.

Indeed, assuming that demand on these weekends and holidays is half the demand on business days is the precise approach taken by the New York Public Service Commission in its recent decision on unbundled switching rates. See Proceeding on Motion of the Commission to Examine New York Telephone Company's Rates for Unbundled Network Elements, Case 98-C-1357, Order on Unbundled Network Element Rates, released January 28, 2002, at 36-39. However, use of Verizon's own cost model shows a much larger effect, as explained in WorldCom's reply comments. Frentrup Supp. Decl. ¶¶ 2, 9.

Using only peak minutes to set switching rates is a clear violation of cost-based pricing principles, which do not allow Verizon to collect revenue unrelated to any costs. The Commission should require Verizon to correct this clear error by reducing Verizon's switch usage rates to reflect usage on all days, or alternatively to offer switch usage at a zero rate on weekends and holidays, before it grants section 271 authority to Verizon. Frentrup Supp. Decl. ¶ 9.

Improper Double Charges on Intra-Switch Calls. Verizon further increases the switching costs of CLECs by the practice of charging its inflated switching rate twice for intra-switch calls, even though an intra-switch call passes through the switch only once. This "double charging" for intra-switch calls has no justification and was explicitly rejected prior to the Commission's section 271 reviews in both New York and Massachusetts, as well as other Verizon states.2 It

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2 New York previously rejected Verizon tariff language applying two switching charges for an intra-switch call. Order Approving Tariff and Directing Revisions, Cases 95-C-0675, et al., June 12, 1998, at 13. Verizon's recent New York compliance tariff sought to reverse the Commission's prior decision, but New York PSC staff suggested that Verizon withdraw this noncompliant language, and on February 28, 2002, Verizon again submitted a compliance filing, stating in its cover letter that the "[unbundled local switching terminating rate element] will not

should be rejected for New Jersey as well. Under the Commission's assumption of 25 percent of local calls being intra-switch, this inflates CLEC switching costs by about 11 percent, but is not addressed – much less justified – by the BPU in its order. Frentrup Supp. Decl. ¶¶ 3, 10.

Vertical Features Improperly Increase Usage Rates. The BPU declined to require Verizon to recover vertical features costs in the fixed port charge rather than in the switch usage charge. Despite the fact that the cost of vertical features does not vary by usage, Verizon recovers those costs in the per minute switch usage rates. This increases the cost in the usage portion of the switch, which is divided by the understated peak minutes, which further inflates the switch usage rate. Frentrup Supp. Decl. ¶ 11.

The BPU's justification for permitting this is the policy argument that placing more costs in the usage sensitive rates would encourage carriers "to evaluate the feasibility of deploying their own switches to eliminate the uncertainty that comes with purchasing switching from Verizon NJ." BPU Decision & Order at 125. But TELRIC principles require rates to be set to recover costs, not to carry out industrial policy. If rates are set on TELRIC principles to reflect costs, both as to levels and structure, carriers will receive the correct economic signals for deploying their own switches and facilities. Even if the BPU is willing to approve usage rates that are set too high in order to carry out its policy judgment that high rates are desirable to motivate CLECs to install their own switches, this is a clear violation of TELRIC principles that this Commission should not permit. Frentrup Supp. Decl. ¶¶ 4, 11.

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apply to intra-switch calls." The Massachusetts commission also rejected Verizon's attempt to assess an unbundled local switching charge twice for an intra-office call. Order, D.T.E. 98-57 (Mar. 24, 2000), at 219. In September

Impact on Switching Rates. These are not *de minimis* problems, as Verizon would like the Commission to believe. Resolving the three errors discussed above would cut the switch rates paid by CLECs by about 45 percent. This would reduce the combined port and usage charges below the new New York levels, as it should due to the somewhat lower switching costs in New Jersey. Accordingly, the Commission should reject Verizon's section 271 application until it has brought its UNE rates to proper TELRIC levels, which will permit broad scale local competition in New Jersey.

CONCLUSION

Verizon's New Jersey application should be denied.

Respectfully submitted,

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March 13, 2002

2000 the Massachusetts commission rejected Verizon's motion for reconsideration. See Order, D.T.E. 98-57 (Phase I) (September 7, 2000), at 45-46.

CERTIFICATE OF SERVICE

I, Vivian Lee, do hereby certify that copies of the foregoing Supplemental Comments of WorldCom, Inc. were sent via e-mail (as indicated) or first class mail to the following on this 13th day of March, 2002.

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Vivian Lee

Vivian Lee

TAB A

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Application of Verizon New Jersey, Inc.,	)	
et al, For Authorization to Provide	)	
In-Region, InterLATA Services	)	CC Docket No. 01-347
in New Jersey	)	
	)	

**SUPPLEMENTAL DECLARATION OF CHRIS FRENTRUP
ON BEHALF OF WORLDCOM, INC.**

Based on my personal knowledge and on information learned in the course of my duties, I, Chris Frentrup, declare as follows:

I. INTRODUCTION AND SUMMARY

1. I am the same Chris Frentrup who filed a Declaration that was part of WorldCom's initial comments in the above-captioned proceeding. See WorldCom Comments, Attachment B. I have reviewed the New Jersey Board of Public Utilities ("NJ-BPU") recent Decision and Order released March 6, 2002, which memorializes the decisions made in November, 2001 by the NJ-BPU regarding Verizon's unbundled network element ("UNE") rates.[1] The purpose of this Declaration is to demonstrate that the NJ-BPU has failed to require Verizon to correct three clear total element long run incremental cost ("TELRIC") violations, and thus that Verizon's current unbundled switching rates in New Jersey are not based on TELRIC

[1] See In the Matter of the Board's Review of Unbundled Network Elements Rates, Terms and Conditions of Bell Atlantic-New Jersey, Inc., Decision and Order, Docket No. TO00060356, released March 6, 2002 ("Decision & Order").

and are excessive.[2] Unless these errors are corrected, the Commission should reject Verizon's section 271 application for New Jersey.

2. First, as WorldCom noted in its initial and reply comments, Verizon has used only the minutes for the peak usage days to determine the per-minute switch usage rates. Because this methodology excludes weekend and holiday usage, it results in excessive usage rates. The stated basis for the NJ-BPU's decision to allow use of this methodology is premised on a misunderstanding of the manner in which switches are engineered, and misinterprets cost models cited in the state record. Because this methodology does not use all the demand handled by the network, it violates the TELRIC methodology. The Commission should require Verizon to set its switching rates using all demand for the year, not just the demand on the 251 business days in the year. Making the conservative assumption that daily usage on these off-peak days would be half the daily usage on the peak days would lower the switch usage rates by 18.5 percent, as set forth in WorldCom's initial comments. A significantly greater reduction would occur when Verizon's model is run reflecting its actual ratio of peak to off-peak usage, as set forth in WorldCom's confidential reply comments.

3. Second, the resulting overstated switching rates are applied on both ends of an intra-switch call, even though the call passes through the switch only once. Assuming, as the Commission has in its TELRIC benchmark analyses, that 25 percent of local calls are intra-switch, this results in competitive local exchange carriers ("CLECs") being overcharged another

[2] In addition to the errors discussed in this declaration, the other input and methodology errors discussed in WorldCom's initial comments remain as well. The errors discussed in this Declaration are those that are indisputable TELRIC violation, which the Commission must require Verizon to correct before granting it Section 271 approval for New Jersey.

11 percent for switching. This issue is simply not addressed by the NJ-BPU at all. Both the New York and Massachusetts commissions, among others in the Verizon territory, have rejected this double-charging for intra-switch calls. By allowing Verizon to set its per-minute switching rates based on less than the total number of minutes (by excluding weekend and holiday minutes), and then assessing those rates on more than the total number of minutes transiting a switch (by charging two minutes for each intra-switch minute), the NJ-BPU has clearly allowed Verizon to charge substantially more than the TELRIC of switching.

4. Finally, the NJ-BPU allows Verizon to inflate switch usage rates by the inclusion of the cost of vertical features in those variable rates rather than in the fixed port rate. One policy justification cited by the NJ-BPU for doing so is that placing more costs in usage rates will encourage CLECs to deploy more of their own switches. However, TELRIC principles require that rates be set to recover costs. Setting prices at above-cost levels cannot be excused by a policy judgment that doing so is desirable to provide an extra incentive to CLECs to increase their investment.

III. VERIZON'S USE OF ONLY BUSINESS DAYS TO SET SWITCHING RATES IS INCONSISTENT WITH TELRIC

5. Switch usage rates should be set by dividing the cost of the usage portion of the switch by the total annual switched minutes. Verizon first correctly determines the size of the switches needed based on peak minutes of usage for the switches. It then determines total annual switched minutes in two steps. It first determines average daily usage of the switch by multiplying minutes of peak usage by the ratio of busy hour usage to total usage. After obtaining the average daily usage in this manner, Verizon then obtains total annual switched minutes by

multiplying the average daily usage by only 251 days, that being the number of weekdays less holidays in a year. This methodology for determining the number of minutes in a year allows Verizon to recover all of its usage-sensitive costs of the switch over 251 days. As a result, all usage-sensitive charges that competitors pay in the remaining 114 days of the year are for costs that are already recovered in the other 251 days. The result is that Verizon's usage-sensitive switch charges are grossly in excess of its costs. The NJ-BPU uses three rationales for accepting Verizon's use of this methodology.

6. First, it agrees with Verizon's claim "that the busy hour determination is relevant to both sizing the switch and determining the manner in which costs should be spread among users." Decision & Order at 122. WorldCom agrees that busy hour usage should determine the size of the switch. Switches are sized to provide an acceptable level of blocking of calls during the busy hour. However, once that size of switch is set, the correct usage to set the per-minute rate is all minutes that will be assessed the usage charge, not just usage during weekdays. Either Verizon should set the switch usage rate by dividing costs by all minutes, or Verizon should charge a zero rate for minutes that occur on weekends and holidays.

7. The second reason given by the NJ-BPU for not including weekend and holiday usage in setting the rate is that weekend and holiday usage would "effectively reduce average switch capacity." Id. This is incorrect. There is no such thing as "average switch capacity." A switch has a given capacity, once it is designed and put in place. If the minutes going through a switch in the busy hour is, e.g., 1 million, it does not matter whether the busy hour occurs once a month or once a week or once a day. A switch sized to handle 1 million minutes in the busy hour will be able to handle 1 million minutes every hour. Hours that do not

have that level of demand do not change the switch's capacity, they merely change its average utilization.

8. Finally, the NJ-BPU cites the use of business days in the HAI Model and in a cost study sponsored by WorldCom's expert witness in a separate proceeding as justifying their use in this case. The NJ-BPU has misunderstood the use of business days in both cases. In the HAI Model (and in fact, in the Commission's Synthesis Model), the number of business days is used as an input to estimate the number of minutes switched in the busy hour given an annual number of minutes.[3] This estimate of busy hour minutes is then used to size the switch. However, once the size of the switch is determined, the usage rate is determined by dividing that switch usage costs by <u>all</u> minutes of use. Similarly, the study cited by the NJ-BPU that was performed by WorldCom's expert witness was for another CLEC that in fact had very little usage on the weekends. In any case, even that small amount of weekend usage was included in the cost study.

9. The rationales proffered by the NJ-BPU in justification of its decision to allow Verizon to use only business day demand in setting switch usage rates misunderstand switch engineering and the role that business days played in other costs studies. Those rationales do not justify the NJ-BPU's decision. Since the use of only business days violates the TELRIC requirement that all demand be considered, the Commission should reject the use of only business days in setting switch usage rates. As previously explained in WorldCom's comments, using the very conservative assumption that usage on non-peak days is only half the level of

3 Note that Verizon's methodology does the opposite operation – given a number of busy hour minutes, it uses the number of business days to obtain an estimate of the total number of minutes.

usage on peak days implies that the switch usage rates should be 18.5 percent lower.[4] Use of Verizon's own cost model shows a much larger effect, as explained in WorldCom's reply comments. The Commission should require Verizon to correct this clear error by reducing Verizon's switch usage rates to reflect usage on all days, or alternatively to offer switching usage at a zero rate on weekends and holidays, before it grants section 271 authority to Verizon.

III. INTRA-SWITCH CALLS SHOULD NOT BE ASSESSED TWO SWITCH USAGE CHARGES

10. Having developed an overstated switch usage rate, Verizon further raises CLEC costs by imposing this inflated switching rate twice for intra-switch calls, even though an intra-switch call passes through the switch only once. This "double charging" issue was not addressed in the Decision & Order, even though it was raised in the proceeding by WorldCom. This practice has been explicitly rejected by both the New York and Massachusetts commissions, and should be rejected for New Jersey as well. Intra-switch calls do not use the switch processor two times. The call arrives at the switch from one customer, is processed by the single switch and routed to another customer who is served by that same switch. The call does not pass through the switch processor twice, and thus should not be charged for both an originating and terminating minute. Under the Commission's assumptions of 25 percent of local calls being intra-switch, this inflates CLEC switching costs by about 11 percent.

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4 Assuming that demand on these weekends and holidays is half the demand on business days is exactly the approach taken by the New York Public Service Commission in its recent decision on unbundled switching rates. See Proceeding on Motion of the Commission to Examine New York Telephone Company's Rates for Unbundled Network Elements, Case 98-C-1357, Order on Unbundled Network Element Rates, released January 28, 2002, at pages 36-39.

IV. VERTICAL FEATURES COSTS SHOULD BE RECOVERED IN PORT RATES

11. The NJ-BPU declined to require Verizon to recover vertical features costs in the fixed port charge rather than in the variable usage charge. Its justification for doing so was that placing more costs in the usage sensitive rates would encourage carriers "to evaluate the feasibility of deploying their own switches to eliminate the uncertainty that comes with purchasing switching from Verizon NJ." See Decision & Order at 125. If rates are set cost-causatively, both as to levels and structure, other carriers will receive the correct signals for deploying their own switches. The NJ-BPU is apparently willing to countenance usage rates that are set too high, in order to carry out its policy judgment that such high rates would be desirable to incent CLECs to install their own switches. This is a clear violation of TELRIC principles, and should not be permitted by the Commission.

IV. SWITCH RATES SHOULD BE REDUCED BY NEARLY HALF

12. The combined effect of these errors is to overstate Verizon's switching charges substantially. WorldCom estimates that correcting the number of business days as reflected in Verizon's cost model, moving the features costs to the port rather than usage rates, and removing the double charging for intra-switch calls would cut overall switch charges paid by competing carriers by about 45 percent. This would reduce the sum of port and switching charges below the recently adopted New York rates, consistent with the somewhat lower switching costs in New Jersey identified by the Commission's Synthesis Model.

V. CONCLUSION

13. The NJ-BPU's recent Decision & Order makes several clear errors in applying the TELRIC methodology to set switching rates. Until these errors are corrected, the Commission should reject Verizon's section 271 application.

14. This concludes my Declaration on behalf of WorldCom.

I declare under penalty of perjury that the foregoing is true and correct. Executed on March 13, 2002.

Chris Frentrup